

Proposed Technical Correction:

**SECTION #.** G.S. 113-276 reads as rewritten:

**"§ 113-276. Exemptions and exceptions to license and permit requirements.**

(a), (b) Repealed by Session Laws 1979, c. 830, s. 1.

(c) Except as otherwise provided in this Subchapter, every landholder, landholder's spouse, and ~~dependents~~ dependent under 18 years of age residing with the landholder may take wildlife upon the land held by the landholder without any license required by G.S. 113-270.1B or G.S. 113-270.3(a), except that these persons are not exempt from the American alligator licenses established in G.S. 113-270.3(b)(6) and G.S. 113-270.3(b)(7), elk licenses established in G.S. 113-270.3(b)(8) and G.S. 113-270.3(b)(9), bear management stamp established in G.S. 113-270.3(b)(1b), and the falconry license described in G.S. 113-270.3(b)(4).

(d) Except as otherwise provided in this Subchapter, individuals under 16 years of age are exempt from the hunting and trapping license requirements of G.S. 113-270.1B(a) and G.S. 113-270.3, except that these individuals are not exempt from the American alligator licenses established in G.S. 113-270.3(b)(6) and G.S. 113-270.3(b)(7), elk licenses established in G.S. 113-270.3(b)(8) and G.S. 113-270.3(b)(9), and the falconry license described in G.S. 113-270.3(b)(4). Individuals under 16 years of age may hunt under this exemption, so long as the hunter is accompanied by an adult of at least 18 years of age who is licensed to hunt in this State. For purposes of this section, "accompanied" means that the licensed adult maintains a proximity that enables the adult to monitor the activities of the hunter by remaining within sight and hearing distance at all times without use of electronic devices. Upon successfully obtaining the hunter education certificate of competency required by G.S. 113-270.1A(a), a hunter may hunt under the license exemption until age 16 without adult accompaniment. Individuals under 16 years of age are exempt from the fishing license requirements of G.S. 113.270.1B(a) and G.S. 113-271.

(e) Repealed by Session Laws 2005-455, s. 1.11.

(f) A special device license is not required when a landing net is used in any of the following applications:

- (1) To take nongame fish in inland fishing waters.
- (2) To assist in taking fish in inland fishing waters when the initial and primary method of taking is by the use of hook and line – so long as applicable hook-and-line fishing-license requirements are met.

As used in this subsection, a "landing net" is a net with a handle not exceeding eight feet in length and with a hoop or frame to which the net is attached not exceeding 60 inches along its outer perimeter.

(g) Bow nets covered by a special device license may be used in waters and during the seasons authorized in the rules of the Wildlife Resources Commission by an individual other than the licensee with the permission of the licensee. The individual using another's bow net must also secure the net owner's special device license and keep it on or about the individual's person while fishing in inland fishing waters.

(h) Repealed by Session Laws 1979, c. 830, s. 1.

(i) A food server may prepare edible wildlife lawfully taken and possessed by a patron for serving to the patron and any guest the patron may have. The Executive Director may provide for the keeping of records by the food server necessary for administrative control and supervision with respect to wildlife brought in by patrons.

*Alternative 1 to subsection (j)*

~~[(j) A migrant farm worker who has in his~~An individual in possession of a temporary certification ~~of his status as such issued by the Rural Employment Service of the Division of Employment Security on a form provided by the Wildlife Resources Commission establishing the individual's status as a migrant farm worker~~ is entitled to the privileges of a resident of the State and of the county indicated on ~~such the~~ certification during the term ~~thereof of the certification~~ for the purposes of purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2), (4), ~~113-271(d)(2)~~ and (6)a.] *(initial suggestion from GSC, pending research on "Rural Employment Service of the Division of Employment Security on a form provided by the Wildlife Resources Commission.")*

*Alternative 2 to subsection (j)*

~~[(j) A migrant farm worker who has in his~~An individual in possession of a temporary certification ~~of his status as such by the Rural Employment Service of the Division of Employment Security on a form provided by the Wildlife Resources Commission establishing the individual's status as a migrant farm worker~~ is entitled to the privileges of a resident of the State and of the county indicated on ~~such the~~ certification during the term ~~thereof of the certification~~ for the purposes of purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2), (4), ~~113-271(d)(2)~~ and (6)a.] *(suggestion from WRC)*

*Alternative 3 to subsection (j)*

~~[(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the Division of Employment Security on a form provided by the Wildlife Resources Commission~~An individual working in the State who is in possession of an H-2A visa establishing the individual's status as a temporary agricultural worker is entitled to the privileges of a resident of the State ~~and of the county indicated on such certification during the term thereof~~ for the purposes of purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2), (4), ~~113-271(d)(2)~~ and (6)a.] *(alternative from staff – if intent is that "migrant worker" refers to federal status as a temporary agricultural worker)*

*Alternative 4 to subsection (j)*

~~[(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the Division of Employment Security on a form provided by the Wildlife Resources Commission is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes of purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2), (4), and (6)a.]~~  
*(alternative from staff - if original intent was that "migrant worker" referred to workers from another state and there is no current intent that it apply to federal status as a temporary agricultural worker)*

(k) Box-trapped rabbits may be released for the purpose of training dogs on an area of private land that is completely enclosed with a metal fence through which rabbits may not escape or enter at any time. The Wildlife Resources Commission may establish rules to set standards for areas on which rabbits are released. A person may participate in a field trial for beagles without a hunting license if approved in advance by the Executive Director, conducted without the use or possession of firearms, and on an area of not more than 100 acres of private land that is completely and permanently enclosed with a metal fence through which rabbits may not escape or enter at any time.

(l) The fishing license provisions of this Article do not apply upon the lands held in trust by the United States for the Eastern Band of the Cherokee Indians.

(l2) A resident of this State who is a member of the Armed Forces of the United States serving outside the State, or who is serving on full-time active military duty outside the State in a reserve component of the Armed Forces of the United States as defined in 10 U.S.C. § 10101, is exempt from the hunting and fishing license requirements of G.S. 113-270.1B, G.S. 113-270.3(b)(1), G.S. 113-270.3(b)(3), G.S. 113-270.3(b)(5), G.S. 113-271, and the Coastal Recreational Fishing License requirements of G.S. 113-174.2 while that person is on leave in this State for 30 days or less. In order to qualify for the exemption provided under this subsection, the person shall have on his or her person at all times during the hunting or fishing activity the person's military identification card and a copy of the official document issued by the person's service unit confirming that the person is on authorized leave from a duty station outside this State.

A person exempted from licensing requirements under this subsection is responsible for complying with any reporting requirements prescribed by rule of the Wildlife Resources Commission, complying with the hunter education requirements of G.S. 113-270.1A, purchasing any federal migratory waterfowl stamps as a result of waterfowl hunting activity, and complying with any other requirements that apply to the holder of a North Carolina license.

(m) The fourth day of July of each year is declared a free fishing day to promote the sport of fishing and no hook-and-line fishing license is required to fish in any of the public waters of the State on that day. All other laws and rules pertaining to hook-and-line fishing apply.

(n) The Wildlife Resources Commission may adopt rules to exempt individuals from the hunting and fishing license requirements of G.S. 113-270.1B, 113-270.3(b)(1), 113-270.3(b)(1a), 113-270.3(b)(1b), 113-270.3(b)(2), 113-270.3(b)(3), 113-270.3(b)(5), and 113-271 who participate in organized hunting and fishing events for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission. A person exempted from licensing requirements under this subsection is responsible for complying with any reporting requirements prescribed by rule of the Wildlife Resources Commission, purchasing any federal migratory waterfowl stamps as a result of waterfowl hunting activity, and complying with any other requirements that apply to the holder of a North Carolina license. Those exempted persons shall comply with the hunter safety requirements of G.S. 113-270.1A or shall be accompanied by a properly licensed adult who maintains a proximity to the exempt individual that enables the adult to monitor the activities of, and communicate with, the individual at all times.

(o) An eligible member of a volunteer fire department for five consecutive fiscal years, including the prior fiscal year, may be issued any adult resident lifetime license issued and administered by the Wildlife Resources Commission for fifty percent (50%) of the applicable license fee amount. For purposes of this subsection, the term "eligible member" means an individual appearing on the certified roster of eligible firefighters submitted to the North Carolina State Firefighters' Association under G.S. 58-86-25. (1929, c. 335, ss. 1, 10; 1935, c. 486, s. 12; 1937, c. 45, s. 1; 1945, c. 567, ss. 1, 6; c. 617; 1949, c. 1203, s. 1; 1951, c. 1112, s. 2; 1957, c. 849, s. 1; 1959, c. 304; 1961, cc. 312, 329; c. 834, s. 1; 1963, c. 170; 1965, c. 957, s. 2; 1967, cc. 127, 654, 790; 1969, c. 1030; c. 1042, ss. 1-5; 1971, c. 242; c. 282, s. 1; c. 705, ss. 1, 2; c. 1231, s. 1; 1973, c. 1262, s. 18; 1975, c. 197, ss. 1-4; 1977, c. 191, s. 1; c. 658; 1979, c. 830, s. 1; 1987, c. 827, s. 98; 1993 (Reg. Sess., 1994), c. 684, ss. 6, 8, 9; 1999-456, ss. 29, 30; 2005-285, s. 1; 2005-438, s. 2; 2005-455, ss. 1.11, 1.12, 1.13, 1.14; 2009-25, s. 1; 2009-248, s. 1; 2011-401, s. 3.15; 2013-63, s. 4; 2013-283, s. 14; 2018-90, s. 3; 2019-204, ss. 6(o), 12.)" [2021-88, s. 10]

Explanation:

This statute was included in the GSC technical corrections bill this session (S.L. 2021-88), correcting a number of cross-references to repealed statutes and making general clean-up changes. The statute above reflects the current law, including the amendments of S.L. 2021-88. When reviewing the technical correction prior to inclusion in the bill, the Commission directed staff to research the language in subsection (j) "the Rural Employment Service of the Division of Employment Security on a form provided by the Wildlife Resources Commission."

We contacted the Department of Commerce and the Wildlife Resources Commission (WRC), and both agree that the references to both the Rural Employment Service and a form by WRC are obsolete. Comments from each are noted in the background, along with suggested language from WRC. The numbered alternatives in the technical correction to (j) above correspond to the numbered background items below. The changes above also include removal of a cross-reference to a repealed statute, which was approved by the Commission in June, and one additional clean-up change in subsection (c).

Comments from the Division of Employment Security suggest "migrant worker" refers to federal status, which is probably how most people conceptualize the term today. However, comments from the Division of Workforce Solutions indicate "migrant worker" may have originally referred to workers coming to NC from other states. This subsection was added to the statute in 1979. Staff located a 1971 publication of the Employment Security Commission (now the Division of Employment Security) using the term "interstate migrants," and using terms much as "migrant workers" and "migrant crews" when referring to workers from other states. A 1983 Legislative Research Commission report on migrant workers also refers to migrants from other states of the US, but it does mention that "more recently," migrants had come from international homelands. It looks like the evolution from domestic to foreign farm workers began at this time and has reached the point today that the term "migrant worker" is generally used in reference to foreign-born workers. At the time the statute was drafted, however, it is very unlikely this was the intended meaning. The H-2A visa is the most appropriate modern replacement of a migrant worker certificate; however, it is unclear whether updating the statute to reference the H-2A visa is consistent with the original intent.

Background:

1. Comments from Commissioner Faires via email, in advance of the June meeting and as explained during the meeting –

*With respect to G.S. 113-276, I could not find any reference on the Department of Commerce website to a Rural Employment Service. I'm wondering if that description is current and makes sense. I don't understand the reference to a form of the Wildlife Commission either.*

*In (j), rewrite the first sentence to read: An individual in possession of a temporary certification, issued by the Rural Employment Service of the Division of Employment Security, establishing the worker's status as a migrant farm worker is entitled to ....*

2. Comment and suggested rewrite from Wildlife Resources Commission –

*Please see attached a possible fix to the issue. In researching, the Rural Employment Service of DES does not exist. WRC has never in my 30+ year career provided a form for such exemption. I*

modified the language to be less specific . . . we do not want to modify the text in a way that creates a problem where a problem doesn't exist.

(j) A migrant farm worker who has in ~~his~~ their possession a temporary certification of ~~his~~ their status ~~as such by the Rural Employment Service of the Division of Employment Security on a form provided by the Wildlife Resources Commission~~ is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes of purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2), (4), and (6)a.

### 3. Comment From Division of Employment Security of the Department of Commerce:

*I am unfamiliar with the Rural Employment Service in either DES or the former Employment Security Commission. I believe it may have been existed when migrant farm workers had a specific agency within the Department of Administration dealing with migrant farm worker issues (N.C. Farmworker Council) and immigration was handled differently than it is today. I think this has been superseded by current statutes such as N.C. Gen. Stat. §§ 96-14.1(e)(5) (where federal law determines the eligibility of "aliens"), 96-14.9(d)(3) (where an alien must be in satisfactory immigration status under INS to be considered available for work), and 96-14.9(k) (identification requirements). DES has a rule at 04 NCAC 24B .0301(b) requiring green cards, trusted traveler cards, or I-9 acceptable identification for aliens. In short, these issues are handled by current law and this reference is obsolete, in my opinion.*

### 4. Comment From Division of Workforce Solutions of the Department of Commerce:

*DWS does not provide any certification and I agree that the reference is obsolete. Our H-2A coordinator provided me additional background on migrant workers. He thought in the statute "migrant worker" is likely referring to migrant workers that came to NC from other states to perform seasonal farm work in the time that it was written. The federal H-2A program did not yet exist as it does today. Before changes in federal regulations our outreach workers were known as "Rural Manpower Representatives" and some would go to other states to recruit workers for farms. He said that today nonresident guest workers will have a temporary work visa. Resident migrant farmworkers would have I9 documentation as any other resident.*

Definitions of "migrant" and "migrant agricultural worker" in statute:

## **Chapter 95.**

### **Department of Labor and Labor Regulations.**

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#### Article 19.

#### Migrant Housing Act of North Carolina.

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### **§ 95-223. Definitions.**

As used in this Article, unless the context requires otherwise:

- (1) "Agricultural employment" means employment in any service or activity included within the provisions of Section 3(f) of the Fair Labor Standards Act

of 1938, or section 3121(g) of the Internal Revenue Code of 1986; and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state and including the harvesting of Christmas trees, and the harvesting of saltwater crabs;

- (2) "Commissioner" means the Commissioner of Labor of North Carolina;
- (3) "Day" means a calendar day;
- (3a) "Director" means the Director of the Agricultural Safety and Health Bureau, who is the agent designated by the Commissioner to assist in the administration of this Article.
- (4) "Established federal standard" means those standards as set out in, and interpretations issued by, the Secretary of the United States Department of Labor in 29 C.F.R. 1910.142, as amended;
- (5) "Migrant" means an individual, and his dependents, who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence;
- (6) "Migrant housing" means any facility, structure, real property, or other unit that is established, operated, or used as living quarters for migrants;
- (7) "Operator" means any person who owns or controls migrant housing; and
- (8) "Person" means an individual, partnership, association, joint stock company, corporation, trust, or legal representative;
- (9) "Substantive violation" means a violation of a safety and health standard, including those that provide fire prevention, and adequate and sanitary supply of water, plumbing maintenance, structurally sound construction of buildings, effective maintenance of those buildings, provision of adequate heat as weather conditions require, and reasonable protection for inhabitants from insects and rodents. A substantive violation does not include technical or procedural violations of safety and health standards. (1989, c. 91, s. 2; 1993, c. 300, s. 3; 2007-548, s. 1.)

## **Chapter 130A.**

### Public Health.

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#### Article 16.

#### Postmortem Investigation and Disposition.

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### Part 6. Final Disposition or Transportation of Deceased Migrant Agricultural Workers and Their Dependents.

#### **§ 130A-417. Definitions.**

The following definitions shall apply throughout this Part:

- (1) "Dependent" means child, grandchild, spouse or parent of a migrant agricultural worker who moves with the migrant agricultural worker in response to the demand for seasonal agricultural labor.

- (2) "Migrant agricultural worker" means a worker who moves in response to the demand for seasonal agricultural labor. (1983, c. 891, s. 2.)

Definition of "resident" in statute:

## **Chapter 113.**

### **Conservation and Development.**

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#### **SUBCHAPTER IV. CONSERVATION OF MARINE AND ESTUARINE AND WILDLIFE RESOURCES.**

##### **Article 12.**

##### **General Definitions.**

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#### **§ 113-130. Definitions relating to activities of public.**

The following definitions and their cognates apply to activities of the public in regard to marine and estuarine and wildlife resources:

- (1) Repealed by Session Laws 1979, c. 830, s. 1.
- (1a) Falconry. – The sport of taking quarry by means of a trained raptor.
- (1b) Individual. – A human being.
- (1c) Landholder. – Any individual, resident or nonresident, owning land in this State or, when he is the one principally engaged in cultivating the land, leasing land in this State for agricultural purposes.
- (2) Owner; Ownership. – As for personal property, refers to persons having beneficial ownership and not to those holding legal title for security; as for real property, refers to persons having the present right of control, possession, and enjoyment, whether as life tenant, fee holder, beneficiary of a trust, or otherwise. Provided, that this definition does not include lessees of property except where the lease arrangement is a security device to facilitate what is in substance a sale of the property to the lessee.
- (3) Person. – Any individual; or any partnership, firm, association, corporation, or other group of individuals capable of suing or being sued as an entity.
- (4) Resident. – In the case of:
  - a. **Individuals.** – One who at the time in question has resided in North Carolina for the preceding six months or has been domiciled in North Carolina for the preceding 60 days. When domicile in the State for a period of 60 days up to six months is the basis for establishing residence, the individual must sign a certificate on a form supplied by the Department or the Wildlife Resources Commission, as the case may be, stating the necessary facts and the intent to establish domicile here.
  - b. Corporations. – A corporation which is chartered under the laws of North Carolina and has its principal office within the State.

- c. Partnerships. – A partnership in which all partners are residents of North Carolina and which has its principal office in the State.
  - d. Other Associations and Groups Fitting the Definition of Person. – An association or group principally composed of individual residents of North Carolina, with its principal office, if any, in the State, and organized for a purpose that contemplates more involvement or contact with this State than any other state.
  - e. Military Personnel and Their Dependents. – A member of the Armed Forces of the United States stationed at a military facility in North Carolina, the member's spouse, and any dependent under 18 years of age residing with the member are deemed residents of the State, of the county in which they live, and also, if different, of any county in which the military facility is located. A member of the Armed Forces of the United States on active duty outside the State of North Carolina shall be deemed an individual resident of the State for purposes of all the following licenses:
    - 1. Coastal Recreational Fishing Licenses issued pursuant to G.S. 113-174.2(c)(1) and (c)(4).
    - 2. Combination Hunting and Inland Fishing Licenses issued pursuant to G.S. 113-270.1C(b)(1).
    - 3. Sportsman Licenses issued pursuant to G.S. 113-270.1D(a).
    - 4. Hunting Licenses issued pursuant to G.S. 113-270.2(c)(1) and (c)(5).
    - 5. Special Activity Licenses issued pursuant to G.S. 113-270.3(b)(1).
    - 6. Trapping Licenses issued pursuant to G.S. 113-270.5(b)(1).
    - 7. Hook-and-Line Licenses issued pursuant to G.S. 113-271(d)(1), (d)(2), and (d)(6)a.
    - 8. Unified Hunting and Fishing Licenses issued pursuant to G.S. 113-351(c)(1) and (c)(2).
  - f. Students. – Nonresident students attending a university, college, or community college in the State.
- (4a) To Buy; Purchase. – Includes a purchase or exchange of property, or an offer or attempt to purchase or exchange, for money or any other valuable consideration.
  - (5) To Fish. – To take fish.
  - (5a) To Hunt. – To take wild animals or wild birds.
  - (6) To Sell; Sale. – Includes a sale or exchange of property, or an offer or attempt to sell or exchange – for money or any other valuable consideration.
  - (7) To Take. – All operations during, immediately preparatory, and immediately subsequent to an attempt, whether successful or not, to capture, kill, pursue, hunt, or otherwise harm or reduce to possession any fisheries resources or wildlife resources.
  - (7a) To Trap. – To take wild animals or wild birds by trapping.



- (8) Vessel. – Every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water. (1965, c. 957, s. 2; 1971, c. 705, s. 3; 1973, c. 1262, s. 18; 1979, c. 830, s. 1; 2005-455, s. 1.21; 2011-183, s. 76; 2013-191, s. 1.)

Length of stay for an H-2A visa, according to the [US Citizenship and Immigration Services](#):

*Generally, USCIS may grant H-2A classification for up to the period of time authorized on the temporary labor certification. H-2A classification may be extended for qualifying employment in increments of up to 1 year each. A new, valid temporary labor certification covering the requested time must accompany each extension request. The maximum period of stay in H-2A classification is 3 years.*